of Mr. Justice Lamar convicts the majority of having fallen into this error in the principal case, in citing as authority for the regulation under consideration various decisions sustaining statutes fixing standard forms of policies, regulating the investment of funds and the publication of accounts. Such regulations as the foregoing are traceable not to the extraordinary power to regulate public callings, but to the same general power which is exemplified in such statutes as pure food laws. While the United States Supreme Court has sustained as a valid exercise of the police power a statute fixing the weight of a loaf of bread,[17] it does not seem probable that it could be induced to give its approval to an act fixing the price of bread. Such a result would be possible only on the theory that the business of baking had become affected with a public interest.[18]

R. W. M.

WATER LAW: NATURE OF TITLE OF DISTRIBUTING COMPANY.—Does a water company by diverting water from a stream for the purpose of distribution to consumers acquire a private title to the water? Some courts have held that the title to the water-right vests in the distributing company, others have held that the distributing company is merely the agent of the consumer and that the consumer acquires the title because he actually devotes the water to a beneficial use. Upon the decision of this main question as to whether the title vests in the distributor or the consumer, many other questions such as "priorities among consumers, charges for perpetual water-rights, and valuation of the distributing system in taxation or rate cases" depend.

The question of the water title of a distributor arose in the case of *San Joaquin & Kings River Canal & Irrigation Company v. County of Stanislaus et al.* in determining the valuation of the distributing system in order to fix the rates. Judge Morrow's decision in the Circuit Court[1] that distributing companies did not hold the title to water-rights and hence could not charge rates on their valuation was recently reversed by the United States Supreme Court.[2] That court upheld the doctrine of the California courts which have recognized a distinct ownership of water-rights as being vested in distributing companies.[3]

Mr. Justice Holmes in the discussion declares that by appropriating this water for distribution and sale, the distributor does

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[17] Schmidinger v. Chicago (1913), 226 U. S. 578, 57 L. Ed. 364, 33 Sup. Ct. Rep. 182.

[18] The only case in this country that ever upheld the constitutionality of a statute fixing the price of bread was Guillotte v. New Orleans (1857), 12 La. Ann. 432.

[1] (Cir. Ct., N. D. Cal., 1911), 191 Fed. 875. See also, 1 Cal. Law Rev. 85.

[2] (April 27, 1914), 34 Sup. Ct. Rep. 652.

[3] Leavitt v. Lassen Irrig. Co. (1909), 157 Cal. 82, 106 Pac. 404, 29

not thereby so dedicate it to public use under California law that he loses his private right in the same. The declaration in the constitution of California[4] that water appropriated for sale is appropriated for a public use does not mean that the use is for the public at large, but that the title may still vest in private individuals[5] subject to the public use of those within reach of the water who may demand it in return for a reasonable compensation. The water when appropriated is considered private property[6] and it is unreasonable to suppose that the constitution meant to compel a gift from the former owners to the users and that in dealing with water for sale there should be nothing to sell.[7]

It was alleged in the lower court that the claimants' predecessor had paid $112,000 for these interests, and the valuation claimed was $1,000,000. The Supreme Court of the United States did not discuss valuations or whether such a right, originally granted gratuitously by the state, is a proper basis for estimating private income in the case of a public utility.[8] The decision was evidently based on the policy of adopting California law for cases arising in California and did not commit the court to the policy of interfering with the Colorado doctrine in other states. The Colorado doctrine is that beneficial use is the basis of all water-rights, and since the consumer applies the water to the land he is the actual appropriator and the "water-right" vests in him.[9] Most of the western states have followed Colorado.[10]

The Supreme Court of Nevada[11] decided the case of *Prosole v. Steamboat Canal Co.* almost simultaneously with the federal decision. In that case the question arose as to whether the distributing company must continue to deliver the customary amount of water to a consumer. The court held that the title vests in the consumer, and that the distributing company can not supply a consumer later in time of acquisition of right until it has supplied the usual amount to all customers with a prior right. In adopting the Colorado instead of the California doctrine, Nevada was evidently influenced by the weight of authority in the western states.

E. B. B.

L. R. A. (N. S.) 213; Lassen Irrig. Co. v. Long (1909), 157 Cal. 94, 106 Pac. 409. See Wiel, Water Titles, 2 Cal. Law Rev. 279.

[4] Cal. Const., art. xiv, § 1.

[5] Thayer v. Cal. Development Co. (1912), 164 Cal. 117, 128 Pac. 21.

[6] Palmer v. R. R. Comm. of Cal. (Cal., 1914), 138 Pac. 997.

[7] San Diego Water Co. v. San Diego (1897), 118 Cal. 556, 50 Pac. 633 38 L. R. A. 460; Wiel, Water Rights in Western States, 3d ed., §§ 1340, 1325.

[8] 2 Cal. Law Rev. 3.

[9] Wheeler v. Northern Colo. Irrig. Co. (1888), 10 Colo. 582, 17 Pac. 487; Farmers etc. Co. v. Southworth (1889), 13 Colo. 155, 21 Pac. 1028.

[10] Farmers Irrig. Dist. v. Frank (1904), 72 Neb. 136, 100 N. W. 286; Slosser v. Salt River Co. (1901), 7 Ariz. 376, 65 Pac. 332; Hagerman v. McMurray (1911), 16 New Mex. 172, 113 Pac. 823.

[11] (Nev., May 4, 1914), 140 Pac. 720.